

SUBCOMMITTEE NO. 5

Agenda

Gloria Romero, Chair
John Campbell
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Thursday, April 21, 2005
Upon Adjournment of Session
Room 112

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5430 Board of Corrections

The Board of Corrections works in partnership with city and county officials to develop and maintain the standards for the construction and operation of local jails and juvenile detention facilities, as well as standards for the employment and training of local corrections and probation personnel. The board also disburses training funds, administers the allocation of funds to counties for the federal Violent Offender Incarceration/Truth-in-Sentencing Grant Program, the Juvenile Hall/Camp Restoration Program, the Mentally Ill Offender Crime Reduction Grant Program, and the Juvenile Crime Enforcement and Accountability Challenge Grant Project. In addition, the board regularly conducts special studies in penology and corrections.

The Board is composed of fifteen members, twelve appointed by the Governor and confirmed by the Senate, representing specific elements of local juvenile and adult criminal justice systems and the public. Statutory members are the Secretary of the Youth and Adult Correctional Agency, who acts as Chair of the Board, and the directors of the Departments of Corrections and Youth Authority. The Board meets bimonthly and all meetings are open to the public.

Board of Corrections - Source of Funds					
Program	(dollars in thousands)			Change	Percent Change
	2003-04	2004-05	2005-06		
General Fund	\$21,019	\$137,898	\$29,552	-\$108,346	-78.6%
Corrections Training Fund	2,241	2,496	2,468	-28	-1.1%
Federal Trust Fund	149,109	41,435	40,719	-716	-1.7%
Reimbursements	646	488	322	-166	-34.0%
Totals	\$173,015	\$182,317	\$73,079	-\$109,238	-59.9%

Budget Overview. The budget for the Board of Corrections (BOC) proposes total expenditures of \$73.1 million, which is a decrease of \$109.2 million, or 59.9 percent from estimated current year expenditures. This decrease is due primarily to the proposed shift of funding for county youth probation programs from the General Fund to the federal Temporary Assistance for Needy Families (TANF) funds within the Department of Social Services. In the current-year, the budget provides \$134 million from the General Fund for this program. The General Fund portion of BOC's budget is proposed to decrease by \$108.3 million (78.6 percent) for a total of \$29.6 million. The federal fund portion of the proposed budget is \$40.7 million, a decrease of \$716,000 (1.7 percent) from estimated current-year expenditures.

The proposed funding for state operations is \$8.8 million, which is an increase of \$1.1 million (14 percent) from the current year. The number of authorized personnel would increase from 58.5 positions to 62 positions. The proposed local assistance budget is \$64.3 million, which is a decrease of \$110.3 million, or 63.2 percent, from estimated current-year expenditures.

The table on the next page shows the expenditures for the Board broken down by major program areas.

Board of Corrections - Summary of Program Expenditures					
Program	(dollars in thousands)			Change	Percent Change
	2003-04	2004-05	2005-06		
Corrections Planning and Programs	\$144,095	\$141,526	\$30,586	-110,940	-78.4%
Facilities Standards and Operations	2,208	1,854	1,444	-410	-22.1%
Standards and Training for Local Officers	2,496	2,751	2,748	-3	-0.1%
Administration	255	352	352	0	0.0%
Distributed Administration	-255	-352	-352	0	0.0%
Juvenile Justice Grants Program	24,215	36,185	36,484	299	0.8%
Unallocated Reduction	0	0	-42	-42	n/a
State-Mandated Local Programs	1	1	1,859	1,858	n/a
Totals	\$173,015	\$182,317	\$73,079	-\$109,238	-59.9%
Authorized Positions	59.1	58.5	62.0	3.5	6.0%

ISSUES PROPOSED FOR CONSENT / VOTE-ONLY

1. State Mandated Local Program. The budget proposes \$1,858,000 in funding for the following state-mandated local program: Chapter 183, Statutes of 1992 – Domestic Violence Treatment Services. This mandate has been deferred in recent years.

2. Finance Letter – Suspended Mandate. This Finance Letter requests that Item 5430-295-0001 be amended to add a suspended mandate, Victims' Statements—Minors (Chapter 332, Statutes of 1981). This mandate and language was not included in the Governor's Budget because it was erroneously believed to have been repealed. This mandate has been suspended since at least 1998-99.

Staff Comments Regarding the Proposed Consent / Vote-Only Issues. No issues have been raised regarding these proposals.

Action.

Approved Consent Items. Vote: 3-0

DISCUSSION ISSUES**1. Juvenile Facilities – Assessment of Suitability.**

Budget Request. The budget proposes 1.9 positions and \$176,000 from the General Fund to administer the statutorily mandated assessment and determination of suitability of local juvenile facilities. Existing law requires the board to conduct biennial inspection of facilities used to house minors. If the BOC deems that the facility is not being operated and maintained as a suitable place for confinement, the BOC can order that the facility not be used for confinement of minors until its condition is remedied.

The statutory mandates contained in Sections 209 and 210 of the Welfare and Institutions Code require the BOC to:

- Make a preliminary determination of unsuitability for a juvenile facility that does not comply with one or more of the regulations found in Title 15 and 24, unless the non-compliance issue is directly related to the overpopulation of the facility where a totality of conditions indicate that the facility is otherwise suitable;
- Give notice of findings of unsuitability to all persons having authority to confine minors in this facility;
- Monitor the facility during the 60 days that the facility has to come into compliance with the regulations and re-inspect the facility, if necessary;
- Review the county's corrective action plan for facilities that have been declared unsuitable and provide a reasonable time, not to exceed 90 days, for the county to come into compliance; and
- Make a determination of unsuitability if the facility fails to file a corrective action plan. Or fails to meet its commitments outlined in their corrective action plan, at the BOC's next scheduled meeting (thereafter, the facility may not be used to confine minors).

Staff Comments. There are currently 60 juvenile halls in California that are covered by the statutes. BOC staff estimate, based on the 2000-02 and 2002-04 biennial inspection cycles, discussions with local juvenile facility administrators, and recent juvenile construction projects, that there will be approximately 21 facilities that will be annually examined for suitability. More than 100,000 California juveniles are booked into these facilities each year. The BOC's standards affect staffing ratios, health services, food quality, environmental safety, and other factors related to the welfare of all of these confined juveniles. Currently, both the BOC and juvenile court judges share the responsibility for ensuring that facilities meet the standards.

In the 2002-03 budget year, the BOC's budget and staffing was eliminated for this function. Without sufficient funding, the BOC has not been able to meet the mandate of §209, consequently placing the BOC and the state at risk of adverse litigation and potentially resulting in a disservice to youth detained in local detention facilities.

Action.

Approved Request. Vote: 3-0

2. Juvenile Justice Crime Prevention Act Funds

The budget proposes de-linking the Juvenile Justice Crime Prevention Act (JJCPA) and the COPS programs and reducing funding for the JJCPA program by \$75 million. The remaining \$25 million would be shifted to the BOC for distribution to local governments. Since the creation of the JJCPA program, its funding has been linked with that of the COPS program. The funding for the COPS program is proposed to continue at \$100 million. A statutory change de-linking the funding for the programs would be needed to enact this proposal.

The Governor's Budget Summary indicates that the administration is working with local government and other stakeholders in the juvenile justice system to develop a comprehensive plan to reform California's juvenile justice system and to redefine the role of the CYA, but no specific plan is included in the budget. Potential changes that are being evaluated include shifting responsibility for supervising youthful offenders on parole from CYA jurisdiction to the counties; limiting the types of offenders that can be sent to the CYA; and establishing a new direction for the CYA that focuses on the most serious offenders and those in most need of mental health and sex offender treatment.

No proposal has been put forward at this time. It is not clear that there will be sufficient time for the Legislature to complete a thorough review of the proposal during the May Revision process that is generally used to consider adjustments to population, caseload, and enrollment.

Staff Comments. This proposal would eliminate a program that has shown effectiveness in reducing juvenile crime and delinquency. The JJCPA program requires the BOC to submit an annual report to the Legislature on: 1) the overall effectiveness of the statutorily required local planning process; 2) program expenditures; and 3) results on six juvenile justice outcomes. The results for the statutorily mandated outcomes indicate that the JJCPA programs, as a whole, are making a significant difference in curbing juvenile crime and delinquency. For example, the analysis of outcomes for juveniles receiving program services compared to juveniles in a county-designated reference group shows lower arrest and incarceration rates, and higher rates for completing restitution payments and performing court-ordered community service for juveniles served by the program. In addition, results on commonly used local outcomes, including increased school attendance, improved academic performance, and decreased drug usage, also underscore the effectiveness of the JJCPA programs.

This issue crosses over to the jurisdiction of Subcommittee #4, which handles Budget Item 9210 – Local Government Subventions. At a hearing on April 13, that Subcommittee held open the issue of funding for COPS/JJCPA pending additional information from the administration on the juvenile justice reform proposal.

Action.

Held Open

3. Informational Issue -- Funding for County Youth Probation Programs.

The budget proposes to shift funding for county youth probation programs from the General Fund to federal TANF funds. In the current year, this program had been shifted from TANF funds to the General Fund. Specifically, \$134 million in General Fund was provided in the current year in the BOC budget to continue this program, with partial-year funding of \$67.1 million provided in federal TANF dollars through the Department of Social Services. Under the 2005-06 budget proposal, \$201.4 million for county youth probation programs would be funded through federal TANF funds. Funding this program through TANF will impact other programs, such as CalWORKs, that are also funded through TANF funds.

Staff Comments. Subcommittee #3 is reviewing this proposal in the context of all the TANF fund shift proposed in the budget. Subcommittee #3 held this issue open at a hearing on April 7. No action on this issue is necessary at this time.

Informational Issue

5440 Board of Prison Terms

The Community Release Board was established in 1977 and renamed the Board of Prison Terms (BPT) in 1980. The board considers parole release and establishes the length and conditions of parole for all persons sentenced to prison under the Indeterminate Sentence Law, persons sentenced to prison for specified terms of less than life, and for persons serving a sentence for life with possibility of parole. The board is also responsible for parole revocation hearings and for reviewing applications for clemency. The board has nine commissioners appointed by the Governor and confirmed by the Senate.

Budget Overview. The budget proposes \$72.9 million from the General Fund for the BPT. The proposal represents an increase of \$1.8 million, or 2.6 percent above current-year expenditures. Total authorized positions are proposed to be 370.6, which is an increase of 54.3 positions from the current year. Funding in the current year is significantly higher than in the prior year. In the May Revise last year, the Legislature approved an augmentation of \$35.4 million and 134 positions to implement the Valdivia Remedial Plan. Also in the current year, the administration proposed increases of \$2.5 million due to increased caseload from Valdivia and \$6.5 million for attorney and monitoring costs related to Valdivia.

Board of Prison Terms -- Program Expenditures					
Program	<i>Expenditures (dollars in thousands)</i>				<i>Percent Change</i>
	2003-04	2004-05	2005-06	Change	
Board of Prison Terms	\$25,421	\$71,007	\$72,852	\$1,845	2.6%
Total Authorized Positions	183.5	316.3	370.6	54.3	17.2%

Discussion Issues

1. *Valdivia v. Schwarzenegger.*

Budget Request. The budget proposes 61.1 positions and \$7 million to meet the projected increase in hearing workload related to the *Valdivia* Remedial Plan for the budget year.

Remedial Plan. In December 2003, the parties in the case jointly submitted to the court their plan which includes several significant reforms to the revocation system. These reforms are designed to ensure a timely and fair revocation process for parolees. The most significant of the reforms are as follows.

- ***Establishes Probable Cause Hearing as of July 2005.***
- ***Requires Revocation Hearing Within 35 Calendar Days as of January 2005.***
- ***Requires Attorneys for All Parole Violators.***

Staff Comments. Regarding implementation of the *Valdivia* remedial plan, the BPT reports that it is ahead of all implementation timeframes. BPT has opened 14 decentralized revocation units, has hired and trained 29 new deputy commissioners, implemented new hearing procedures, is staying within the 35 days for revocation hearings, and will be implementing probable cause hearings by the July deadline.

Workload Projections in the Budget Are Based on Use of Intermediate Sanctions. The agreement assumed that the use of intermediate sanctions by parole agents and BPT would reduce the total caseload of parolees in the revocation process, thereby allowing BPT to conduct the remaining hearings within the shortened time limits established in the agreement. The current workload projections assume that some parole violators are sent to intermediate sanctions.

Staff Comments. In an April 11 memo, the Secretary of the YACA Agency indicated that intermediate sanctions will not be used in lieu of parole revocation. To the extent that the workload estimates assume the use of intermediate sanctions for some violators, the budget request for *Valdivia* workload may not be sufficient to remain within the mandated timeframes. The Subcommittee may wish to ask BOT how the changes resulting from the April 11 memo will impact *Valdivia* workload and whether the workload projections for *Valdivia* will be updated.

Action.

Held Open

2. Hearings for Life-Term Inmates

Budget Request. The budget proposes 1.4 positions and \$190,000 for an increase in the number of parole consideration hearings for lifer prisoners.

Background. Certain offenders in California prisons, particularly those punished for murder, are serving so-called indeterminate sentences in which the period of time to be served in prison before release to parole is not fixed in advance by the court. These indeterminately sentenced offenders are often called "lifers" even though most are eventually legally eligible for release. The BPT is the state agency primarily responsible under state law for deciding when those lifers who have served the minimum required prison time, and thus are now eligible for parole, will actually be released to the community.

Action.

Held Open

3. Decision Review Workload

Budget Request. The budget proposes 4.2 positions and \$294,000 for the Decision Review for Lifer Hearings. This responsibility was transferred from the Hearings Operations Division to the Legal Division, but due to the implementation of the *Valdivia* remedial plan, the BPT indicates that sufficient resources were not transferred to the Legal Division.

The Requested positions are as follows:

- 0.5 Legal Analyst and 1.2 Legal Assistant positions to handle the workload of a moderately thorough review of lifer parole denials.
- 1.6 Legal Analyst and 0.9 Legal Assistant positions to handle the workload of a sophisticated and intensive review of lifer parole grants and to relieve staff handling an increased workload.

The BPT indicates that in 2003, there were 4,086 life parole denials to be reviewed and 167 lifer parole grants to be reviewed.

Action

Held Open

4. Interpreter Service Fees.

Budget Request. The budget proposes an increase of \$481,000 for interpreting services because of an anticipated increase of revocation proceedings. The BPT paid \$344,000 for interpreter services in 2003-04 for 44,101 hearings. Due to the *Valdivia* remedial plan, the BPT estimates that the number of hearings will increase to over 106,000 in the budget year. BPT indicates that approximately 30 percent of cases require interpreter services.

Action.

Request approved. Vote 3-0

5. *Armstrong* Monitoring Fees and ADA Workload

Budget Request. The budget proposes 1.9 positions and \$336,000 for *Armstrong* Monitoring Fees and ADA workload. Of the amount requested, \$265,000 is for court mandated monitoring fees related to the *Armstrong* ADA case, and \$71,000 is for 2 positions in the ADA compliance Unit.

Background. In *Armstrong*, the United States District Court found that the BPT is in violation of Title II of the 1992 Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, and the due process clause of the 14th Amendment to the Constitution. The *Armstrong* court decreed that equal access for disabled prisoners and parolees was not being provided in the hearing process, and issued a permanent injunction requiring that the BPT comply with specified remedies.

The permanent injunction requires that the BPT accommodate the disabled. It was the impetus for expanded staffing and creation of the BPT's ADA Compliance Unit. Plaintiffs' attorneys through their monitoring visits and legal review of other BPT functions scrutinize compliance with all of the injunction's requirements, e.g. a special database identifying disabled prisoners and parolees. The quarterly *Armstrong* court orders requiring that the BPT pay Plaintiffs' attorney fees relate to these ADA compliance functions. These fees have generally varied in the range between \$300-500, 000 per year.

Action.

Request approved. Vote: 3-0

6. Foreign Prisoner Transfer Program

The Foreign Prisoner Transfer Treaty Program is administered jointly by the BPT and the California Department of Corrections (CDC), and allows inmates who are citizens of foreign countries to be transferred to their home country to serve the remainder of their California imposed prison sentence. CDC staff provide a volunteer form to interested inmates. This form is sent to BPT where staff investigate the case to determine whether the inmate meets all eligibility requirements and would be a good candidate for transfer. Once BPT approves the case, it is filed with the United States Department of Justice which negotiates the transfer with the inmate's home country. Currently BPT has one investigator position and a part-time office technician dedicated to the Foreign Prisoner Transfer Program.

The LAO reports that the BPT estimates that about 6,500 foreign inmates are eligible for transfer and that the BPT has successfully transferred 18 foreign inmates in the last three years. By comparison, the LAO notes that the federal system has transferred about 857 in that same period. The BPT does indicate that three inmates have been transferred in the first quarter of 2005 and that BPT has completed the review of four additional inmates. These cases are now pending approval by the U.S. government and the country of origin.

Based on the CDC overcrowding rate, BPT estimates savings of approximately \$700,000 in CDC's budget have been achieved to-date as a result of the transfers.

Analyst's Recommendation. The LAO recommends that the Legislature adopt supplemental report language requiring BPT to update and distribute brochures about the program.

Item 5440-001-0001. No later than October 1, 2005, the Board of Prison Terms shall produce information brochures for the Foreign Prisoner Transfer Treaty Program in sufficient number to distribute to all incoming state prison inmates. These brochures shall be printed in English and Spanish, as well as any other languages the department believes appropriate.

The LAO also recommends augmenting the BPT with more staff to investigate and process the increase in applications, as well as do more field training of CDC staff. Specifically, the LAO recommends that the Legislature authorize two program analyst positions and \$110,000 in BPT to support the transfer program. This additional staff would allow BPT to investigate and process the increase in applications created by the above changes, as well as do more field training of CDC staff.

The LAO also recommends that the Legislature reduce the CDC budget by \$127,000 in the budget year, which represents a reduction of about 7 inmates for the full year. While the exact amount of long-run savings will depend on several factors, an increase of 25 inmate transfers each year, for example, would result in offsetting savings of about \$1 million annually.

Staff Comments. BPT indicates that if the program were augmented, the BPT would likely use the new positions to target specific inmates and to go into the institutions and perform one-on-one interviews with potential candidates.

Action.

Approved LAO recommended augmentation and BBL.